



Statement of the Honorable John Conyers, Jr. for the Hearing on “Deferred Prosecution: Should Corporate Settlement Agreements be Without Guidelines?” Before the Subcommittee on Commercial and Administrative Law 2141 Rayburn House Office Building Tuesday, March 11, 2008, at 10:30 a.m.

We welcome today's hearing to explore the Justice Department's use of corporate settlement agreements. While a useful prosecutorial tool, there are several aspects of their implementation that require congressional oversight and, possibly, legislative attention. In that regard, I'd like to make four important points concerning their use.

First, congressional oversight of these agreements is essential to provide transparency. While we understand the importance of these agreements as effective prosecutorial tools and respect confidentiality concerns, we nonetheless want to know the number of agreements into which the Department has entered and the details encompassed in the agreements.

This information is especially important in light of the fact that the number of these agreements reportedly increased dramatically during the tenure of one of today's witnesses, former Attorney General John Ashcroft. In an effort to obtain information regarding the agreements, I, along with Chairwoman Sanchez and Congressman Pascrell, Jr., sent a letter to Attorney General Mukasey on January 10, 2008. But, as of today, we have yet to receive a response. I sincerely hope that the Department will accommodate our requests so that we can perform oversight and legislate, if necessary.

Second, despite the guidance the Department released just yesterday regarding use of corporate monitors in these agreements, this guidance still fails to ensure uniformity in the agreements themselves. Indeed, some agreements require the implementation of compliance programs, restitution and fines, while others do not.

While it might be necessary to fashion some agreements on a case-by-case basis, general uniformity could ensure their fair application. We hope to address this concern in today's hearing.

Third, we hope that the recently released Department guidelines regarding the selection of corporate monitors are successfully applied and implemented because otherwise there is the potential for Department politicization.

One such example of the potential for politicization has arisen in the agreement between Zimmer Holdings and the U.S. Attorney's Office for the District of New Jersey, in which U.S. Attorney Christopher Christie chose his former supervisor, namely former Attorney General John Ashcroft, as the corporate monitor. Pursuant to this agreement, Zimmer Holdings has agreed to pay Mr. Ashcroft's firm anywhere from \$28 to \$52 million. Prior to Mr. Ashcroft's appointment, however, there was neither public notice of the monitor position nor any public bidding for the assignment.

This example highlights the concern that we must assure the public that the Department of Justice is not rewarding political allies in a forum where prosecutorial independence is paramount. Our investigation into the firings of the nine U.S. Attorneys taught us that the Department can be politicized in a way that undermines this very public confidence. Again, we hope that the Department guidelines released just yesterday accomplish the goal of restoring public confidence.

Fourth, there should be independent judicial oversight of corporate settlement agreements because currently there is no transparency and no requirement that they be made public.

Judicial oversight would help to ensure greater legitimacy of these agreements by providing a neutral decision-maker to prevent abuses and improper politicization, as well as ensure proper completion of the terms of the agreements. Judicial oversight would also provide some currently lacking public exposure of some aspects of the agreement process itself. I hope that today's witnesses will share their thoughts on this topic.

It is in this context that I welcome the testimony of our esteemed witnesses. I sincerely hope that this hearing will allow us to exercise appropriate oversight of these prosecutorial tools and explore potential legislative remedies for troubling aspects of their implementation.